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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/663,687

09/17/2003

Shigeo Honma

H-926-04

3982

24956

7590

03/04/2009

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

LAI, MICHAEL C

ART UNIT

PAPER NUMBER

2457

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/663,687	Applicant(s) HONMA ET AL.	
	Examiner MICHAEL C. LAI	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/17/2003, 1/30/2007, 10/15/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is responsive to communication filed on 9/17/2003.

Claims 5-12 have been examined.

Priority

2. Acknowledgment is made of applicant's claim for benefit of a DIV of application no. 09/606,050, now PAT 6,950,871, filed on 06/29/2000.

Specification

3. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f). Note that the specification needs to be updated to include U.S. Patent No. 6,950,871.

Claim Objections

4. Claim 5 is objected to because of the following informalities: In line 9, the use of the term "a data" is incorrect.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example, claim 5, lines 6-9, recites the limitation "...a first step of obtaining information **to identify data to be executed**; a second step of obtaining **specification of processing** a data denoted by said information;".
8. Claim 5 recites the limitation "a fourth step of **receiving of** processing the data denoted by said information from said storage result" in lines 13-14. It is unclear what exactly the limitation is.
9. Claim 5 recites the limitation "said storage result" in line 14. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 8 recites the limitation "**a sixth of** controlling execution timing of said third step according to said timing" in lines 4-5. It is unclear what exactly the limitation is.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 5-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohran (US 5,835,953, hereinafter Ohran).

Regarding claim 5, Ohran discloses a method for managing a system having servers, a storage which keeps data of said servers, a network which connects said servers and said storage, and a backup device which is connected with said network and backs up said data [FIG. 1], said method comprising:

a first step of obtaining information to identify data to be executed [col. 5, lines 46-57, "...tracks the changes made to the primary mass storage device. This tracking is done by identifying those storage locations on the primary mass storage device that have new data written in them from the time that the backup storage device was in sync with the primary mass storage device..."; col. 10, lines 55-64, "...keeping a map which identifies those storage locations that have new data written in them starting with time T.sub.0..."];

a second step of obtaining specification of processing a data denoted by said information [FIG. 3 and col. 12 line 52 through col. 13 line 30, read/write/snapshot/backup processing];

a third step of instructing said storage which keeps the data denoted by said information to execute said specification of processing [FIG. 5, steps 94 and 96, col. 20 line 35 through col. 21 lines 11]; and

a fourth step of receiving of processing the data denoted by said information from said storage result [col. 21 line 11 through col. 22 line 3].

Regarding claim 6, Ohran further discloses wherein said specification of processing is to transfer said data from said storage to said backup device [FIG. 5, step 106, and col. 21, lines 37-39].

Regarding claim 7, Ohran further discloses wherein said specification of processing is to create a copy of the data denoted by said information, and to transfer said created copy data to said backup device [FIG. 5, steps 104 and 106, and col. 21, lines 12-39].

Regarding claim 8, Ohran further discloses a fifth step of obtaining a timing at which said specification of processing is executed [col. 6, lines 5-12, determine when to do backup.] and a sixth of controlling execution timing of said third step according to said timing [FIG. 2 and col. 10 line 55 through col. 11 line 64].

Regarding claim 9, Ohran further discloses wherein said server in said system is connected with an internet, and said data is sent out to said internet [col. 10, lines 4-9].

Regarding claim 10, Ohran further discloses wherein said server in said system is connected with an internet, and said data is sent out to said internet [col. 10, lines 4-9].

Regarding claim 11, Ohran further discloses wherein said server in said system is connected with an internet, and said data is sent out to said internet [col. 10, lines 4-9].

Regarding claim 12, Ohran further discloses wherein said server in said system is connected with an internet, and said data is sent out to said internet [col. 10, lines 4-9].

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objection made. Applicant must show how the amendments avoid such references and objections. See 37 CFR 1.111(c).

14. Brown et al., US Patent Number 6,148,414, has taught a method and system for implementing shared disk array management functions.

15. Nolan et al., US Patent Number 6,640,278 B1, has taught a method for configuration and management of storage resources in a storage network.

16. Gagne et al., US Patent Number 6,401,178 B1, has taught a data processing method and apparatus for enabling independent access to replicated data.

17. Schubert et al., US 6,460,113 B1, has taught a system and method for performing backup operations using a fibre channel fabric in a multi-computer environment

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Lai whose telephone number is (571) 270-3236. The examiner can normally be reached on M-F 8:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C. Lai
27FEB2009

/YVES DALENCOURT/
Primary Examiner, Art Unit 2457